

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORIGINAL

D.S.F.
CIM

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

MEMORANDUM & ORDER

NEW YORK CITY BOARD OF EDUCATION; CITY OF
NEW YORK; LILLIAM BARRIOS-PAOLI,
PERSONNEL DIRECTOR, NEW YORK CITY
DEPARTMENT OF PERSONNEL (in her official
capacity); NEW YORK CITY DEPARTMENT OF
PERSONNEL,

Defendants,

ACTION I
No. 96-CV-0374 (FB) (RML)

and

JOHN BRENNAN; JAMES G. AHEARN; DENNIS
MORTENSON and SCOTT SPRING,

Intervenors,

and

JANET CALDERO, CELIA I. CALDERON, MARTHA
CHELLEMI, ANDREW CLEMENT, KRISTEN
D'ALESSIO, LAURA DANIELE, CHARMAINE
DIDONATO, DAWN L. ELLIS, MARCIA P. JARRETT,
MARY KACHADOURIAN, KATHLEEN LUEBKERT,
ADELE A. MCGREAL, MARIANNE MAOUSAKIS,
SANDRA D. MORTON, MAUREEN QUINN, HARRY
SANTANA, CARL D. SMITH, KIM TATUM, FRANK
VALDEZ and IRENE WOLKIEWICZ,

Intervenors,

and

PEDRO ARROYO, JOSE CASADO, CELESTINO
FERNANDEZ, KEVIN LAFAYE, STEVEN LOPEZ,
ANIBAL MALDONADO, JAMES MARTINEZ,

WILBERT MCGRAW, SILVIA ORTEGA DE GREEN
and NICOLAS PANTELIDES,

Intervenors.

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JOHN BRENNAN; JAMES AHEARN; ERNIE
TRICOMI; SCOTT SPRING; DENNIS MORTENSEN;
JOHN MITCHELL and ERIC SCHAUER,

Plaintiffs,

ACTION II
No. 02-CV-0256 (FB) (RML)

-against-

JOHN ASHCROFT; RALPH BOYD; UNITED STATES
DEPARTMENT OF JUSTICE; NEW YORK CITY
BOARD OF EDUCATION; CITY OF NEW YORK; NEW
YORK CITY DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES and WILLIAM J.
DIAMOND,

Defendants.

Appearances:

For the Plaintiff:

ESTHER GWEN TAMBURRO, ESQ.
United States Department of Justice
Employment Litigation Section
950 Pennsylvania Ave., N.W.
Washington, DC 20530

For the Defendants:

LAWRENCE J. PROFETA, ESQ.
The City of New York Law Department
100 Church St.
New York, NY 10007

For the Intervenors:

For Intervenor Brennan, et al.:
MICHAEL E. ROSMAN, ESQ.
Center for Individual Rights
1233 20th Street, N.W., Suite 300
Washington, DC 20036

For Intervenor Arroyo, et al.:
MATTHEW B. CALANGELO, ESQ.
NAACP Legal Defense Fund &
Educational Fund, Inc.
99 Hudson St., 16th Floor
New York, NY 10013

For Intervenor Caldero, et al.:
EMILY J. MARTIN, ESQ.
American Civil Liberties Union
Women's Rights Project
125 Broad St., 18th Floor
New York, NY 10004

BLOCK, Senior District Judge:

The parties have submitted a proposed order approving their stipulation adjusting the retroactive seniority dates for 11 Offerees for purposes of layoff protection. On May 2, 2008, the Court conducted a telephone conference with counsel for all parties to discuss the proposed order and, in particular, the Brennan Intervenors' request that class members be given notice and an opportunity to be heard on the proposed order pursuant to Federal Rule of Civil Procedure 23(e).

In the course of the conference, the Court appointed counsel for the Brennan Intervenors, Michael E. Rosman, as class counsel; as such, Mr. Rosman agreed to prepare a proposed notice. In addition, counsel for the Board, Lawrence J. Profeta, agreed to ascertain the means at the Board's disposal for distributing the notice to class members.

On May 6, 2008, Mr. Rosman submitted a proposed notice that had been previously circulated to counsel for the remaining parties. On May 9, 2008, Mr. Profeta advised the Court that the Board could distribute the notice to class members by e-mail.

The Court agrees with the Brennan Intervenors that absent class members are entitled to notice and an opportunity to be heard on the proposed order. The Court also finds that the proposed notice submitted by Mr. Rosman adequately and accurately describes the nature of the litigation and the proposed order, the potential effect on class members' rights and the right to object. Finally, the Court finds that e-mail is a quick, low-cost means of distribution that is reasonably calculated to give class members actual notice of the proposed order.

The Court, therefore, approves the proposed notice, and sets Friday, May 23, 2008, as the date by which objections must be postmarked. On or before Friday, May 16, 2008, the Board shall service the notice on class members by e-mail, and shall immediately thereafter file a certificate attesting that such service has been completed. In addition, the Court will post the notice and the proposed order on its website. After the deadline for objections passes, the Court will review any objections received and determine whether to hold a hearing.

SO ORDERED.

s/Frederic Block

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
May 12, 2008